

REMARKS/ARGUMENTS

The Office Action dated June 9, 2009 (hereinafter Office Action) has been considered. Claims 86-98, 100-108, 110-117 and 120-123 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

The summary sheet (form PTOL-326) of the Office Action correctly lists claims 86-98, 100-108, 110-117, and 120-123 as pending in the application. The summary sheet, and paragraph 2 of the Office Action, also correctly list claims 90, 100, 108, 110, and 120 as being withdrawn from consideration. The summary sheet lists all of the pending, non-withdrawn claims, i.e., claims 86-89, 91-98, 101-107, 111-117, and 121-123, as being rejected.

Although the summary sheet lists all pending, non-withdrawn claims as being rejected, the body of the Office Action provides no information at all regarding the basis on which the claims are being rejected. Thus, although the Office Action contains a great deal of discussion and verbiage in paragraphs 5-29 thereof, none of that discussion appears to be relevant to the pending claims of the present application. For example, paragraph 5 of the Office Action states:

“Claims 1-2, 4-10, 14-21, 23-26, 31, and 41-48 are rejected under 35 U.S.C. §103(a) as being unpatentable over Varieur et al (US Pub No. 20050149053) in view of Feree (US Pub No. 20040225228).”

Note, however, that claims 1-2, 4-10, 14-21, 23-26, 31, and 41-48 are not even pending in the present application, having been canceled in a prior response/amendment. Paragraphs 6 through 29 of the Office Action provide an explanation of why the claims 1, 2, and so forth are rejected over the Varieur and Feree references, but the explanation has nothing to do with the claims that are presently pending in this application. For example, paragraph 6 of the Office Action mentions an anchor engageable to a vertebral body, and an extender including an elongated body. Neither of these items have any relevance to the presently pending claims. Nothing in the body of the Office Action provides any explanation of the basis on which the presently pending claims are being rejected. An error or mixup appears

to have been made, wherein the rejection of claims from some other application has been inserted into the present Office Action.

Without any explanation as to why the pending, non-withdrawn claims are being rejected, the Office Action is incomplete. See 37 C.F.R. § 1.104, and MPEP § 707.07. No *prima facie* rejection of any of the pending claims has been made. In the absence of any *prima facie* rejection, Applicants are entitled to an allowance of the pending claims.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.060PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC
8009 34th Avenue South, Suite 125
Minneapolis, MN 55425
952.854.2700

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By: /Stephen C. Jensen/

Stephen C. Jensen
Reg. No. 35,207